

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,400

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Appeal of )

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INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare finding that she is not disabled for purposes of the Medicaid program.

FINDINGS OF FACT

1. The petitioner is a forty-two-year-old woman who has completed the twelfth grade and has received further certification as a nurse's aide. She last worked as a nurse's aide from 1990 to 1991. She left that job, which required her to be on her feet all day and to lift moderate weights, because of low back pain and fatigue. Since that time she has been employed as a baby-sitter for her two small grandchildren from which employment she earns \$100 per month.
2. A few years ago, the petitioner contracted chronic viral hepatitis for which she was treated and from which she largely recovered although she still suffers from some residual fatigue. Liver function tests completed in August of 1994, showed good functioning and in November of 1994, her physician noted in her record that her hepatitis did not place any limitations on her activity.
3. The petitioner has experienced low back pain since the time when she worked as a nurse's aid. There are no laboratory, x-ray or physical findings which identify a cause for this back pain but her physician feels that she is prevented from heavy lifting due to some arthritic narrowing (stenosis) of the spine. The petitioner takes medication to relieve the pain and can lift no more than five to ten pounds on a repeated basis due to pain.
4. The petitioner has not attempted to look for work as other than a baby-sitter since 1991. She was working as a baby-sitter for sixteen hours per week (eight hours or two days) until the children became too heavy to lift and she left the job in April of 1995. She has not done any outside work since then. She continues to do her housework, laundry, cooking and shopping at a moderate pace. She seldom naps during the day because she has trouble sleeping at night. She is able to take short walks, stand for short periods of time and sit for extended periods so long as she can get up and walk around every twenty to

thirty minutes to stretch out her back. She has no difficulty using her fingers or feet. She has been prescribed physical therapy for her back which she cannot afford but which she believes might help to increase her physical abilities.

5. Based on the above evidence, it is concluded that the petitioner is restricted to lifting objects weighing no more than ten pounds on a repeated basis and cannot perform employment that requires considerable walking or standing. She is, however, able to walk or stand for short periods of time and to sit for long periods of time provided she has the opportunity to get up and stretch every half hour or so. The evidence of her daily activities and her physician's assessments indicate that fatigue does not significantly limit her ability to function during the day.

### ORDER

The decision of the Department is affirmed.

### REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

The petitioner has presented evidence that she cannot return to her prior employment as a nurse's aide as that job involved more strenuous lifting and more standing and walking than the petitioner is currently capable of performing. The issue is whether the petitioner has the residual functional capacity to do other jobs.

The Medical-Vocational guidelines found at 20 C.F.R. § 404, Subpart P, Appendix 2, Rule 201.27 indicate that a 42 year old person (a "younger individual") who has a high school education, has done no more than unskilled work and who is limited to sedentary work due to medical impairments is still capable of performing substantial gainful activity. "Sedentary work" is defined in the regulations as follows:

Sedentary work involved lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

20 C.F.R. 416.967(a)

The medical evidence above indicates that the petitioner is able to perform all the activities listed under

the category of sedentary work. As such, she cannot be found to be disabled. In general, only older persons who have unskilled work histories or very limited educational backgrounds are disabled when limited to sedentary work activities. If the petitioner wishes to get help with medical expenses she is encouraged to apply at her district welfare office for the new Vermont Health Assistance Program (VHAP) which does not require her to show disability but only to meet certain income standards for eligibility.

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